

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LUIS RUIZ,  
Petitioner,  
-v-  
KENNETH MCKEE,  
Respondent

No. 1:08-cv-1219

HONORABLE PAUL L. MALONEY

ORDER DENYING CERTIFICATE OF APPEALABILITY

On January 7, 2010, this court adopted a report and recommendation over objections and denied Petitioner Ruiz's request for habeas relief. Petitioner has filed a notice of appeal. A district court must issue a certificate of appealability either at the time the petition for writ of habeas corpus is denied or upon the filing of a notice of appeal. *Castro v. United States*, 310 F.3d 900, 903 (6th Cir. 2002) (per curiam). A court may issue a certificate of appealability "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2); *see Miller-El v. Cockrell*, 537 U.S. 322, 337 (2003). To satisfy this standard, the petitioner must show that "reasonable jurists could debate whether (or, for that matter, agree that) the petition should have been resolved in a different manner or that the issues presented were 'adequate to deserve encouragement to proceed further.'" *Id.* (quoting *Slack v. McDaniel*, 529 U.S. 473, 483 (2000)). Courts should undertake an individualized determination of each claim presented by the petitioner when considering whether to issue a certificate of appealability. *Murphy v. Ohio*, 551 F.3d 485, 492 (6th Cir. 2009).

Upon review of the claims presented, the court **DENIES** a certificate of appealability. For the reasons outlined in the order denying the petition, reasonable jurists would not disagree that Petitioner has not exhausted his available remedies in state court. Neither has Petitioner established that reasonable jurists would disagree with Judge Solka's conclusion that the Michigan Department of Corrections' September 23, 2008 memorandum renders his claim harmless.

**IT IS SO ORDERED.**

Date: February 5, 2010

/s/ Paul L. Maloney  
Paul L. Maloney  
Chief United States District Judge